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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

Misc. No. 78-5419

GEORGE D. VAN CUREN,

PETITIONER,

-vs-

A.R. JAGO, SUPERINTENDENT,

RESPONDENT.

SUPPLEMENTAL BRIEF IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOUIS A. JACOBS
Member of The Supreme Court Bar
Supervising Attorney
Clinical Programs

CHRIS BLAIR
Pro Hac Vice
Supervising Attorney
Clinical Programs

STANLEY K. LAUGHLIN, JR.
Member of The Supreme Court Bar
Clinical Programs

JONATHAN B. SOWASH
Legal Clerk
Clinical Programs
College of Law
The Ohio State University
1659 North High Street
Columbus, Ohio 43210
(614) 422-6821

ATTORNEYS FOR PETITIONER

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PRELIMINARY STATEMENT

Petitioner George D. Van Curen respectfully prays through this supplemental brief that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit entered in this case on June 21, 1978.

The petition for writ of certiorari was docketed on September 19, 1978. The reasons then asserted for granting the petition were: (1) the need for resolution of conflicting decisions in the Federal Circuit Courts of Appeals on the due process ramifications of parole grants and rescissions; (2) the importance of the question of federal law; and (3) the deprivation of petitioner's property and liberty interest without due process.

This supplemental brief in support of the petition for a writ of certiorari is filed pursuant to Supreme Court Rule 24-5. It is filed to call the attention of this Court to the opportunity for an orderly resolution of constitutional questions raised by the entire parole process. Subsequent to the filing of Van Curen's petition for certiorari, certiorari was granted in Greenholtz v. Inmates of The Nebraska Penal and Correctional Complex, 576 F.2d 1247 (8th Cir. 1978), cert. granted, No. 78-201, rep't at 47 U.S.L.W. 3190 (Oct. 3, 1978). Greenholtz allows consideration of due process ramifications of discretionary parole processes, yet leaves open the question of rescission. Resolution of petitioner's interest in liberty, coupled with Greenholtz, affords this Court the juncture to fully determine the due process ramifications of the parole process.

SUPPLEMENTAL REASONS FOR GRANTING THE WRIT

1. WITH GREENHOLTZ v. INMATES OF THE NEBRASKA PENAL AND CORRECTIONAL COMPLEX, 576 F.2d 1274 (8th Cir. 1978), cert. granted, No. 78-201, rep't at 47 U.S.L.W. 3190 (Oct. 3, 1978) PENDING, THE ORDERLY RESOLUTION OF CONSTITUTIONAL QUESTIONS RAISED BY THE PAROLE PROCESS REQUIRES CONSIDERATION OF THE DUE PROCESS RAMIFICATIONS OF PAROLE RESCISSION.

Presently before the Court in Greenholtz v. Inmates of The Nebraska Panel and Correctional Complex, 576 F.2d 1274 (8th Cir. 1978), cert. granted, No. 78-201, rep't at 47 U.S.L.W. 3190 (Oct. 31, 1978), are the questions of whether due process applies to granting or denial of discretionary parole, and, if so, what procedures are constitutionally mandated. A determination of these questions will do much to quell existing judicial conflict. Regardless of the outcome of Greenholtz, however, the due process ramifications of parole rescission will remain unresolved. Resolution of the constitutional questions raised by parole rescission procedures will allow the determination of due process guarantees in the entire parole process.

The nature of the interest in liberty asserted by petitioner Van Curen is distinguishable from that asserted in Greenholtz. Unlike Greenholtz, a grant of a future parole date had allowed petitioner Van Curen to achieve some status in the hierarchy of parole. The State had provided the inmate with a reward for his conduct during incarceration and a recognition of his qualification for parole. The grant of a tentative parole date had given petitioner Van Curen "...more than an abstract need or desire..., more than a unilateral expectation" of parole. Board of Regents v. Roth, 408 U.S. 564, 577 (1972).

Thus, in contrast to Greenholtz, the question here is whether

the due process clause of the Fourteenth Amendment requires that the state afford an individual some opportunity to be heard prior to rescinding an unexecuted grant of parole." Hulton v. Heggie, 454 F.Supp. 870, 872 (D. Colo. 1978). Petitioner Van Curen's interest in liberty is further distinguishable from those interests recognized in the landmark decisions of Morrissey v. Brewer, 408 U.S. 471 (1972), which held that minimum due process safeguards were necessary prior to revocation of parole, 408 U.S. at 482, and, Wolff v. McDonnell, 418 U.S. 539 (1974), which applied the Morrissey decision to prison disciplinary proceedings involving the potential forfeiture of a prisoner's good time credit.

Unlike Morrissey, the rescission of a grant of parole does not return the person to prison from his state of conditional freedom. Yet, unlike Wolff, the impact of rescission on release is not merely conceivable, it is patent. Thus, consideration of petitioner Van Curen's due process rights in the situation of his parole rescission allows the Court to resolve existing judicial conflict over due process guarantees for the entire parole process.

Despite the developing constitutional framework, as outlined in Morrissey and Wolff, and presently before the Court in Greenholtz, the question of due process ramifications of parole rescission remains unresolved; therefore, the Court should grant this petition.

CONCLUSION

The importance of the due process ramifications of parole grants and rescissions stems from the number of conflicting parole release decisions and their critical signfficance to a prisoner. Petitioner Van Curen's interest in liberty and property affords an orderly resolution of the constitutional questions. For these and the foregoing reasons, the writ must be granted.

Respectfully submitted,

Louis A. Jacobs
LOUIS A. JACOBS
Member of The Supreme Court Bar
Supervising Attorney
Clinical Programs

Chris Blair /lj
CHRIS BLAIR
Pro Hac Vice
Supervising Attorney
Clinical Programs

Stanley K Laughlin Jr /lj
STANLEY K. LAUGHLIN, JR.
Member of The Supreme Court Bar
Clinical Programs

Jonathan B. Sowash
JONATHAN B. SOWASH
Legal Clerk
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